



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Authorize City Manager to execute Land Lease with the Community Partnership for Families of San Joaquin for Construction of a Family Resource Center at Blakely Park

MEETING DATE: November 1, 2006

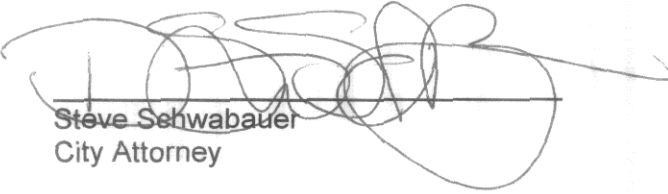
PREPARED BY: City Attorney

RECOMMENDED ACTION: Authorize City Manager to execute land lease with the Community Partnership for Families of San Joaquin for construction of a Family Resource Center at Blakely Park.

BACKGROUND INFORMATION: On August 2, 2006, the Lodi City Council authorized the City Manager to negotiate a land lease with the Community Partnership for Families of San Joaquin for the construction of a Family Resource Center at Blakely Park. Council considered a draft of the lease on October 18, 2006 and requested changes to limit the types of uses available at the site, reduce the term of the lease and reduce the cure period in the event that CPF ceases operation at the site. A redline version of the lease reflecting these changes is attached hereto.

FISCAL IMPACT: The park space that the CPF facility would occupy represents a lost opportunity cost. The project offers the City the prospect of sharing in the construction cost of a new restroom. The Public Works Department will provide 40 hours of in-kind project management assistance.

FUNDING AVAILABLE: Not applicable.


Steve Schwabauer
City Attorney

cc: Recreation Commission
Phyllis Grupe, Board Chair, CPF
Robina Asghar, Executive Director, CPF
Francisco Trujillo, Lodi Site Coordinator, CPF

APPROVED:


Blair King, City Manager

GROUND LEASE

COMMUNITY PARTNERSHIP FOR FAMILIES OF SAN JOAQUIN

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THIS LEASE AGREEMENT ("Lease"), entered into this ____ day of _____, 2006, by and between the CITY OF LODI, a municipal corporation ("City"), and the Community Partnership for Families of San Joaquin ("CPF") shall be as follows:

WHEREAS, the purpose of this agreement is to allow the construction and operation of a Family Resource Center ("FRC") by CPF on land owned by the City; and

WHEREAS, the proposed relationship and arrangement described herein are in the best interests of the City, CPF and the people of Lodi by combining the efforts of both local government and the private sector; and

WHEREAS, CPF'S construction of this facility on City land will provide long term tangible benefits to the citizens of Lodi by assuring them of a place to obtain community services from public and private aid agencies.

NOW, THEREFORE, BE IT AGREED AS FOLLOWS:

1. DEMISED PREMISES.

The premises demised hereunder consists of approximately 5,000 square feet (more or less) building to be commonly known as the Community Partnership for Families Family Resource Center which will be located in the southeast corner of City property commonly known as Blakely Park. The premises is identified more particularly in the diagram attached hereto as Exhibit A and incorporated herein as if fully set forth (hereinafter the "Premises").

2. CONSTRUCTION OF FACILITIES.

CPF agrees to construct a FRC on the Premises. CPF agrees to complete the building shall within 24 months following groundbreaking, which is estimated to begin in early 2008. Further, CPF agrees to complete the interior finishes and equipping of the FRC within 24 months after groundbreaking ("Construction Period"). Prior to commencement of construction of the building shell, CPF shall provide proof that it has the finances to complete construction of the building shell to the City's reasonable satisfaction. Failure of CPF to complete construction within the above time limits shall be deemed a material breach of the lease.

3. USES ALLOWED.

CPF agrees that it will use the FRC constructed under the provisions of this Lease to provide a central location for public and private aid agencies to provide services, and events of general interest to the Lodi community at large. Services coordinated at the site will include financial literacy programs, volunteer income tax services, adult literacy, library services, public health home visiting programs, child protective services, employment specialists, tutors, probation personnel who work with

youth for prevention and intervention (not adult probation case officers), family counseling for prevention and intervention (not treatment), gang outreach for at risk youth (not documented gang members), parent advocates, school councilors, and others. Use of the facility as a residential shelter, drug treatment clinic, documented gang member outreach center, or any services for persons convicted of crimes set forth in California Penal Code 11105.03 or any successor statute is prohibited.

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Deleted: At no time during the provision of services at the facility shall the percentage of those services treating mental health or substance addiction clients constitute more than fifty (50) percent of programs offered.

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4. TERM.

The term of this Lease shall be for a period of thirty (30) years commencing November 1, 2006 and ending November 1, 2036, pursuant to the provisions of Government Code Section 37380. The parties may extend the lease at that time upon mutual agreement.

5. RENT.

Rent for the demised premises shall be one dollar (\$1.00) per year for the entire term of this lease, payable in one lump sum on the first day of November 2006.

6. RELOCATION OF EXISTING FACILITIES.

An elevation plan is attached as Exhibit B. CPF agrees to relocate or reimburse City to relocate the improvements, facilities, and landscaping set forth on Exhibit B attached hereto.

7. OWNERSHIP OF IMPROVEMENTS UPON TERMINATION OR EXPIRATION OF LEASE.

It is agreed between the parties that upon the expiration or termination of this Lease, the parties shall in good faith attempt to renegotiate an agreement to continue similar uses to those specified in Section 2 above. If mutual agreement is not possible, following a reasonable attempt to reach agreement, the City agrees it shall use its best efforts to use the FRC for the purposes set forth in Section 3 above. However, upon surrender, termination or expiration of this Lease, ownership of the FRC shall vest in the City. CPF shall have the right to remove all personal property at termination of this Lease.

8. USE OF FACILITIES BY CITY.

After contacting CPF and obtaining their approval, the City may use the FRC at reasonable times, provided that (1) CPF is not otherwise using the FRC space, and (2) the City's uses of the FRC are consistent with the uses set forth in Section 3 above. As consideration for such use, City shall pay to CPF a reasonable fee covering costs of operation and maintenance as reasonably determined by CPF.

9. ABANDONMENT/CESSATION OF USE BY CPF.

Following the Construction Period, any cessation of use by CPF for a continuous period of ninety (90) days or more shall allow City, within its discretion, to operate the FRC upon notice to CPF. In the event of the City's declaration of abandonment or

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cessation of use, CPF can cure such default and resume operations by demonstrating that it has on hand the projected operating cost for a twelve (12) month period. Such cure must be fully executed prior to the expiration of the six (6) month period set forth below.

In the event of cessation or abandonment of operations under this Lease for a period of six (6) continuous months, the City may declare, after notice to CPF, the Lease null and void within its sole discretion. Additionally, the parties hereto may mutually agree at any time that the City may assume operation of the FRC.

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10. MAINTENANCE OF FACILITIES.

CPF shall be responsible to pay for all utilities and the interior and exterior maintenance of the FRC erected on the Premises. City shall be responsible for the maintenance and upkeep of the balance of Blakely Park exclusive of landscaping installed by CPF in conjunction with construction of the FRC, interior walkways, parking lot and CPF playground. After notice by City to CPF and a reasonable response time, City shall have the right to enter onto the premises for the purpose of performing any necessary maintenance for the preservation of the health or safety of Park users or the public, should CPF fail or refuse to do so. CPF agrees that it shall make all reasonable efforts to keep the FRC free of graffiti.

11. INSURANCE.

Lessee is required to carry a policy of Comprehensive General Liability insurance in compliance with all of the provisions of the "Risk Transfer Requirements For Lease or Use of City of Lodi Facilities", attached hereto as Exhibit "C" and incorporated herein by reference.

12. HOLD HARMLESS.

City and CPF hereby agree to save, defend and hold harmless the other for any suit or cause of action arising exclusively from the negligence or alleged negligence of the indemnifying party, its agents, officers and employees, including reasonable attorneys' fees.

13. TERMINATION/SURRENDER.

Lessee may at any time after completion of construction under this Lease terminate or surrender such Lease with the written consent of City upon six (6) months' written advance notice. Otherwise, Lessee shall not vacate, abandon, terminate nor surrender the Premises at any time during the term hereof and if Lessee shall abandon or vacate the Premises, or be dispossessed by process of law or otherwise, all personal property belonging to Lessee left upon the Premises shall be deemed abandoned at the option of City.

14. NO ENCUMBRANCE BY LESSEE OF REAL PROPERTY.

Lessee shall in no way encumber, mortgage or hypothecate nor pledge as security for any debt all or any portion of the Premises demised hereunder except with

the written consent of City. CPF shall have the right to encumber the improvements on the Premises from time to time during the term of this Lease.

15. DESTRUCTION OF PREMISES.

In the event of a partial destruction of the Premises during the term of this Lease, from any cause whatsoever, CPF shall forthwith repair all damages at its own expense, commencing within sixty (60) days from the date of loss or destruction. In the event that CPF does not within sixty (60) days from the date of loss or destruction commence repairs or reconstruction, as City's sole remedy City may, in writing, deliver to CPF a demand that within thirty (30) days of such notice, CPF either commence reconstruction or abandon this Lease. In the event CPF opts to abandon the Lease, all improvements remaining thereon shall become property of City. This shall in no way be deemed a waiver of any other legal right by either party hereto.

16. NOTICES.

All notices required under this Lease shall be given in writing, by first-class mail with postage prepaid to the following addresses:

City shall be: City Manager
 P.O. Box 3006
 Lodi, California 95241-1910

CPF shall be: Community Partnership for Families of San Joaquin
 P. O. Box 244
 Lodi, California 95241

17. ASSIGNMENT, SUBLETTING OR USE OF THE PREMISES.

CPF shall not assign this Lease or sublet any portion of the Premises without the prior written consent of City, which shall not be unreasonably withheld. Any assignment or subletting without the consent of City shall be void and, at the option of the City. Further, City shall have the right to approve in its sole and absolute discretion all public and private aid agencies not expressly allowed under paragraph 3 of this Agreement given use of the FRC by CPF.

18. APPROVAL OF CONSTRUCTION PLANS BY CITY PRIOR TO CONSTRUCTION OR REMODEL.

CPF shall, prior to the commencement of construction, reconstruction, or substantial remodeling of the Premises, submit such plans in advance to the City for approval.

19. ENTIRE AGREEMENT.

This lease constitutes the entire understanding and agreement between the parties hereto. There shall be no modifications without the written consent of both

parties. The titles contained in the Lease are provided for convenience only and are not controlling in any interpretation hereof.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first hereinabove mentioned.

CITY OF LODI,
a municipal corporation

COMMUNITY PARTNERSHIP
FOR FAMILIES OF SAN JOAQUIN

BLAIR KING, City Manager

By_____

ATTEST:

RANDI JOHL, City Clerk

APPROVED AS TO FORM:

D. STEPHEN SCHWABAUER
City Attorney

Exhibit A

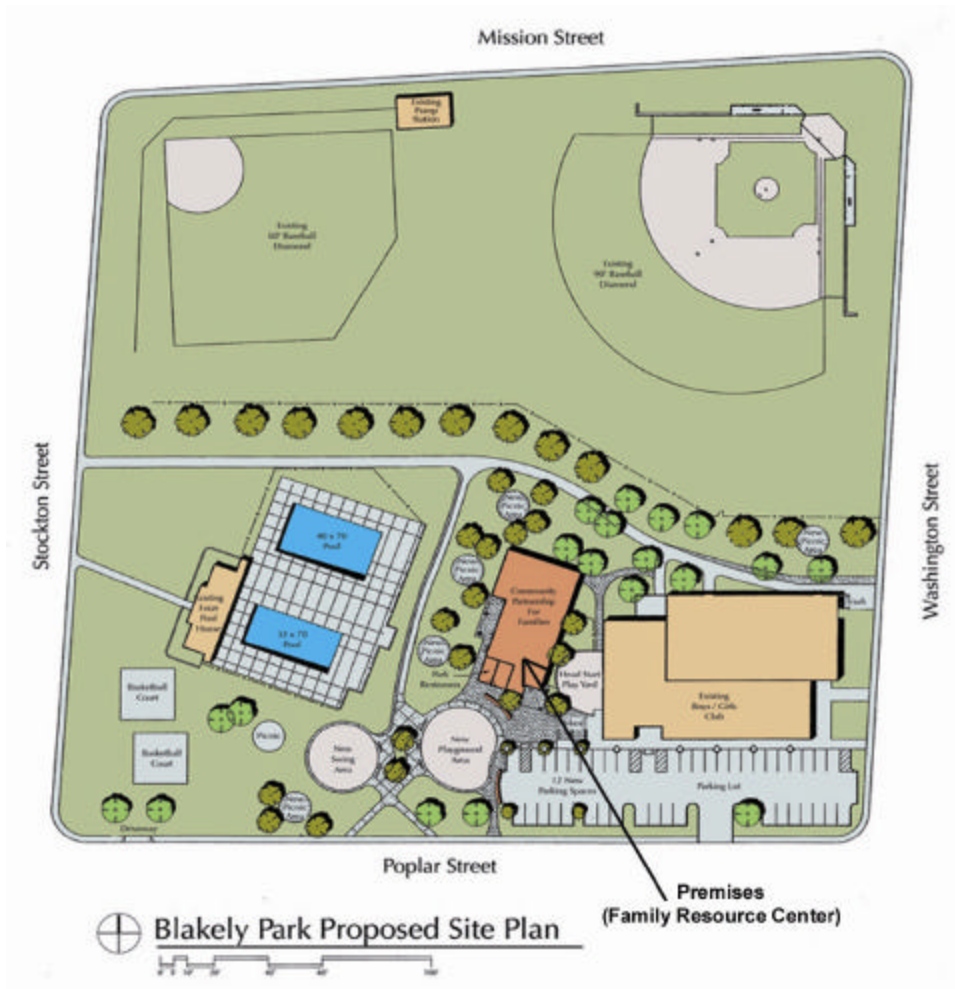




EXHIBIT C

CITY OF LODI RISK TRANSFER REQUIREMENTS FOR LEASE OR USE OF CITY FACILITIES

1. Any individual party or group (hereinafter called Lessee) leasing, renting or otherwise using City of Lodi facilities, is required to carry a policy of Comprehensive General Liability insurance, and must complete a formal application or permit. Processing of applications is handled by the department responsible for the facility.
2. A duplicate or certificate of insurance shall be delivered to the City 30 DAYS prior to the use of City facilities.

NOTE: Lessee agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is as lease consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Govt. Code < 810 et seq.).

"Claims made" coverage requiring the insured's to give notice of any potential liability during a time period shorter than that found in the Tort Claims Act shall be unacceptable.

3. Each insurance certificate shall contain satisfactory evidence that each carrier is required to give the City of Lodi immediate notice of the cancellation or reduction in coverage of any policy during the effective period of the use of the City's facilities.
4. Each insurance certificate shall state on its face or as an endorsement, the location or and a description of the function that it is insuring.
5. If the City has not approved the insurance certificate and appropriate application or permit prior to the commencement of any portion of the function, the City's facilities will not be allowed to be utilized, and any contract or agreement entered into will become null and void.
6. Provided the lease agreement or contract does not prohibit a subtenant, all provisions of these requirements shall apply to and be construed as applying to any subtenant of the Lessee.
7. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

8. In each and every instance, the City of Lodi must be named as an additional insured on the face of the insurance certificate or as an endorsement attached to the insurance certificate. (The City of Lodi, its Elected and Appointed Boards, Commissions, Officers, Agents and Employees, must be named the additional insured, not Hutchins Street Square, Parks and Recreation, or another individual or department).
9. The address of the City of Lodi must be shown along with number 8 above, (i.e. Additional Insured, City of Lodi, its Elected and Appointed Boards, Commissions, Officers, Agents and Employees, 221 W. Pine Street, Lodi, Ca. 95240) This must be the street address NOT the post office box.
10. In addition to the Additional Names Insured Endorsement on Lessee's policy of insurance, said insurance policy shall be endorsed to include the following language or reasonable facsimile:
"Such insurance as is afforded by the endorsement for the Additional Insured's shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."
11. The combined single limits for bodily injury and property damage shall not be less than \$1,000,000 each occurrence. If alcohol is to be consumed or sold at the Lessee's event, then liquor liability coverage must be provided.
12. The Policy effective date and expiration date must coincide with and span the date(s) of the event being insured.
13. If the limits of coverage are not the amounts specified in Section 10 and 11 above and/or if the City is not named as an additional insured on the insurance certificate, not in conformance with the requirements of paragraph 2 above, the City will not accept the insurance certificate, and a corrected certificate must be furnished to the City prior to any use of City facilities.
14. If a corrected insurance certificate and appropriate application or permit is not received by the City of Lodi prior to the use of City facilities, the City will not allow the facilities to be used, and any agreement or contract entered into will become null and void.